

RETURN COPY

THE STATE OF NEW HAMPSHIRE  
Northern District of Hillsborough County  
300 Chestnut Street  
Manchester, NH 03101 2490  
603 669-7410

RETURN COPY

ORDER OF NOTICE

City of Manchester v. William M. Gardner  
Kelly A. Ayotte  
Kevin Clougherty

NO. 09-E-0289

HEARING DATE: 07/14/2009

You have been sued and named as a party in a case filed with the Northern District of Hillsborough County. Attached is a copy of the pleading which began this case.

City of Manchester shall notify each Defendant of the above action by serving the defendant(s) by July 13, 2009 with a copy of the pleading initiating the case, orders that the Court has already issued, and this Order in a manner allowed by law. Plaintiff shall file with the Clerk verification of the service process by July 14, 2009.

**IMPORTANT NOTICE TO William M. Gardner, Kelly A. Ayotte, Kevin Clougherty:**

You must file a written appearance form with the Clerk on or before July 13, 2009. You must send a copy of the appearance form and any other documents filed with the court to the attorney for the party filing the pleading or to the party if there is no attorney. The name and address of the attorney or the party filing the pleading is contained in the pleading. If you do not comply with these requirements you will be considered in default, you will not have an opportunity to dispute the claim(s) and the court may issue orders in this matter which may affect you without your input.

**NOTICE OF HEARING:** A Hearing on the following matters is scheduled for July 14, 2009 at 10:30 AM. in Manchester:

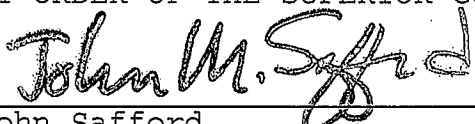
**Hearing on Petition**

Please advise clients, witnesses, and others that it is a class B felony to carry a firearm or other deadly weapon as defined in RSA 625:11,V in a courtroom or area used by a court.

\*\*\*\*\* HEARING UNDER RSA 49B:10 \*\*\*\*\*

07/09/2009

BY ORDER OF THE SUPERIOR COURT

  
John Safford  
Clerk of Court

Thomas R. Clark  
City Solicitor

Thomas I. Arnold, III  
Deputy City Solicitor



Peter R. Chiesa  
Gregory T. Muller  
John G. Blanchard  
Jeremy A. Harmon

**CITY OF MANCHESTER**  
*Office of the City Solicitor*

July 6, 2009

John M. Safford, Clerk  
Hillsborough County Superior Court  
Northern Judicial District  
300 Chestnut Street  
Manchester, NH 03101

**RE: Appeal of City of Manchester**  
**Docket No. 09-E-**

Dear Mr. Safford:

Enclosed please find an Appeal of the City of Manchester for filing with the Court and a draft for the entry fee of \$205.00. Please note RSA 49-B:10 IV provides for a hearing to be scheduled within 10 days.

Please issue orders of notice to the Respondents in your usual course. To expedite service, I am available to pick up the orders of notice at your convenience and can be reached at 624-6523.

Thank you in advance for your time and attention to these regards.

Very truly yours,

Peter R. Chiesa, Esquire

PRC/hms

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT  
Docket No.

City of Manchester  
One City Hall Plaza  
Manchester, NH 03101

v.

William M. Gardner  
Secretary of State  
State House, Room 204  
Concord, NH 03301

Kelly A. Ayotte  
Attorney General  
33 Capitol Street  
Concord, NH 03301

Kevin Clougherty, Commissioner  
Department of Revenue Administration  
109 Pleasant Street  
Concord, NH 03301

APPEAL OF THE CITY OF MANCHESTER

NOW COMES the City of Manchester, NH, a municipal corporation duly chartered by

~~the State of New Hampshire, by and through counsel, the Office of the City Solicitor, and~~

pursuant to RSA 49-B:10 IV appeals a decision of the Secretary of State, Department of Revenue Administration ("DRA"), and Attorney General under RSA 49-B:5-a as follows:

1. On July 30, 2008, the Manchester City Clerk received a Charter Amendment Petition relating to Section 6.15 Limitation of Budget Increases of the Charter of the City of Manchester from a Petitioners' Committee. Exhibit A.

2. The Manchester City Clerk found the found the number of verified signatures insufficient and returned the Carter Petition to the Petitioners' Committee.
3. On August 16, 2008, the Manchester City Clerk received a supplemental petition and on August 18, 2008 certified as sufficient the number of verified signatures necessary for a valid Charter Amendment Petition. Exhibit B.
4. On August 27, 2008, the Manchester City Clerk filed a certified copy of the proposed Charter Amendment with the Secretary of State, Attorney General, and Commissioner of the Department of Revenue Administration requesting review to insure consistency with the general laws of the State of New Hampshire pursuant to RSA 49-B:5-a. Exhibits C, D, and E.
5. On September 12, 2008, the Manchester City Clerk received a reply from the New Hampshire Secretary of State stating the N.H. Department of Justice, Secretary of State's Office, and the DRA (by former Commissioner G. Phillip Blatsos) had no objection to the proposed Charter Amendment, in effect holding the proposed Charter Amendment would comply with the general laws of the State of New Hampshire. Exhibit F.
6. On September 8, 2008, the City of Manchester Board of Mayor and Aldermen as required by RSA 49-B voted to send the proposed Charter Amendment to a special election to coincide with the November 2009 General Election.

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**I. The Detailed and Comprehensive Statutory Scheme for the Budget Process Created by the Legislature under RSA 49-C:23 Preempts the Proposed Charter Amendment.**

7. The proposed RSA 49-B Charter Amendment seeks to modify the City of Manchester's ("City") budgetary process by limiting any annual increase to a factor equal to

the change in the National Consumer Price Index-Urban. See Proposed Charter Amendment 6.15 A. 2., annexed hereto as Exhibit A.

8. As a subdivision of the State, Piper v Meredith, 110 N.H. 291, 295 (1978), the City of Manchester's Charter provisions defining budgetary process must comply with the following provisions of RSA 49-C:23:

**49-C:23 Budget Process and Fiscal Control.**

The charter shall provide for the following:

I. A budget submission date and a date by which an annual budget shall be finally adopted by the elected body. Failing final adoption by the established date, the budget shall be determined as provided in the city charter, or as originally submitted by the chief administrative officer if no such provision is made in the city charter.

II. One or more public hearings on the budget before its final adoption. A copy of the proposed budget and notice of the public hearing shall be published at least one week in advance of any public hearing.

III. Procedures for the transfer of funds among various budgeted departments, funds, accounts, and agencies as may be necessary during the year.

IV. An annual independent audit conducted by certified public accountants experienced in municipal accounting. Copies or abstracts of such audits shall be made public along with an annual report of the city's business. Nothing in this paragraph shall prevent the elected body from requiring such other audits as it deems necessary. Audit services shall be put out to bid on a periodic basis as specified in the charter.

V. Bonding of officials, officers and employees, the cost of which shall be paid by the city.

VI. Procedures for appropriation of funds, after notice and public hearing and by a 2/3 vote, for purposes not included in the annual budget as adopted.

VII. Designation of one or more depositories of city funds by the elected body, the periodic deposit of funds, and the security required for such funds. Personal surety bonds shall not be deemed proper security.

VIII. Periodic, but at least quarterly, reporting of the state of the city's finances to the public and the elected body by the chief administrative officer. The chief administrative officer, with approval of the elected body, may reduce

appropriations for any item or items, except amounts required for debt and interest charges or other legally-required expenditures, to such a degree as may be necessary to keep total expenditures within total anticipated revenues.

IX. Establishment of a fiscal control function, including pre-audit of all authorized claims against the city before payment. The head of such function need not be a resident of the city or the state at the time of selection, shall not be treasurer, and shall be chosen solely on the basis of executive and administrative qualifications and actual experience in and knowledge of accepted practices in respect to the duties of municipal fiscal management.

9. Under Article VI, the City's Charter incorporates the mandates of RSA 49-C:23 as follows:

#### **SECTION 6.02 BUDGET REVIEW AND RECOMMENDATIONS**

The mayor and such other officials as the mayor shall select, shall review all department budgets to submit the budget in the form set forth in Section 6.03.

#### **SECTION 6.03 BUDGET FORMULATION, SUBMISSION AND MESSAGE.**

(a) The mayor shall establish the form and organization of procedures for preparation and adoption of the annual budget, the capital improvement budget, and other budget instruments and plans for future fiscal periods as the mayor deems appropriate and which shall conform to all city ordinances concerning budgets and fiscal matters. Such procedures shall require that all budgets include all proposed expenditures according to general objects of expenditure and the proposed use and all anticipated revenue.

(b) On or before the last day of March of each year, the mayor shall submit to the board of aldermen a budget for the ensuing fiscal year and an accompanying message.

(c) The mayor's budget message shall explain the budget in fiscal terms and as an outline of city programs contained and affected. It shall outline the proposed financial policies of the city for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures and revenues together with the reasons for such changes, summarize the city's debt position and include such other material as the mayor deems desirable.

(d) The budget as presented shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the estimated property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be arranged to show comparative figures for actual and estimated income and expenditures of the current fiscal year and

actual income and expenditures of the preceding two (2) fiscal years. It shall indicate in separate sections:

- (1) Proposed goals and objectives and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit and program, purpose or activity, and the method of financing such expenditures;
- (2) Proposed capital expenditures for at least the ensuing two (2) fiscal years; detailed for each fund by organization unit when practicable, and the proposed method of financing each such capital expenditure; and
- (3) The anticipated income and expense and profit and loss for the ensuing year for each utility or other enterprise fund operated by the city.

For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus the fund balance carried forward, exclusive of reserves.

#### **SECTION 6.04 BUDGET ADOPTION.**

(a) *Notice and hearing.* The board of mayor and aldermen shall publish a copy of the proposed budget, a notice stating the times and place where copies of the message and budget are available for inspection by the public, and the time and place for a public hearing on the mayor's budget as submitted, at least one week in advance of the public hearing.

(b) *Amendment before adoption.* After the public hearing, the board of mayor and aldermen may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income and provided that no consolidation of city departments shall be accomplished solely in the budget process without separate and specific additional action by the board of mayor and aldermen. If amendments are made to the budget submitted by the mayor, a second public hearing may be held providing public comment on the changes made, prior to the final adoption of the budget.

(c) *Adoption.* The board of mayor and aldermen shall adopt the budget on or before the second Tuesday in June of the fiscal year currently ending. Such adoption shall include such appropriation and revenue ordinances as shall be required to fund the budget adopted. The power of the mayor to veto acts of the board shall apply to the entire budget or any line item thereof stating the specific reasons for the objection and the proposed alternatives to the item vetoed, subject to the power of the board of aldermen to override. In the event of the exercise of a line item veto all portions of the budget not so vetoed shall be passed. (As used herein "line item" shall mean any object of expenditure listed in the budget.) The school department budget shall constitute a single line item. Action by the board of aldermen on any veto shall be completed by

June 30. The final adoption of the budget shall require, subject to the veto powers of the mayor, the vote of eight members of the board of aldermen.

(d) If the board of mayor and aldermen shall fail to adopt appropriation resolutions for the ensuing fiscal year as provided herein, the budget as originally submitted by the mayor shall become the budget.

10. The proposed Charter Amendment would regulate the budget process by placing a limit on the dollar amount of a budget the board of mayor and alderman could approve, a regulation not set forth in RSA 49-C:23. Since nowhere in the comprehensive statutory framework governing the budget process did the legislature authorize municipalities to regulate beyond its provisions, RSA 49-C:23 necessarily preempts the proposed Charter Amendment. See Appeal of Concord, Merrimack County Superior Court, 08-E-406, page 14, decided March 18, 2009, (Nicolosi, J.) Annexed hereto as Exhibit G. Citing Town of Hooksett v Baines, 148 N.H. 625, 627 (2002). ([P]reemption will occur when local legislation either expressly contradicts or otherwise runs counter to the legislative intent underlying a statutory scheme.”)

**II. The Proposed Charter Amendment Will Interfere with the Mayor’s Duty to Present the Board of Mayor and Aldermen with an Original Budget Based Upon the Financial Needs of the City.**

11. RSA 49-C:16 vests the Mayor with the following powers and duties:

**49-C:16 General Powers and Duties of Mayor and City Manager.**

The charter shall specify a mayor or city manager who shall be the chief administrative officer and the head of the administrative branch of the city government, supervising the administrative affairs of the city and carrying out the policies enacted by the elected body. He shall enforce the ordinances of the city, the charter, and all general laws applicable to the city. He shall keep the elected body informed of the condition and needs of the city and shall make such reports and recommendations as he may deem advisable and perform such other duties as may be required by charter, ordinance or resolution of the



elected body. He shall have and perform such other powers and duties not inconsistent with the provisions of the charter as now are or may be conferred or imposed upon him by municipal ordinance or upon mayors or city managers by general law. The city manager shall have the right to take part in the discussion of all matters before the city council, but not the right to vote.

12. Pursuant to RSA 49-C, the City Charter grants the Mayor chief administrative duties as follows:

#### **SECTION 2.08 POWERS AND DUTIES.**

- (a) *Chief executive officer.* The administrative and executive powers of the city shall be vested in the mayor.
- (b) *Administrative powers.* The mayor shall have the power to supervise the administrative affairs of the city. The mayor shall carry out the policies enacted by the board of aldermen and perform other duties as are consistent with those of a chief executive.
- (h) *Budget officer.* The mayor shall exercise administrative control over the expenditure of all appropriations; establish a budget format and the procedures for the adoption of the budget; review all departmental budgetary requests; and make recommendations to the board of aldermen regarding financial policies, appropriation resolutions and revenues.

13. The City Charter provides that Department Heads make their respective budget requests to the Mayor:

#### **SECTION 3.04 (d)**

*Budgetary authority.* The department head shall prepare such budget and program plans and requests as may be necessary for the operation and development of the department. The department head shall submit the same to the mayor for inclusion in the city budget, all in accordance with guidelines set by the mayor.

14. If passed, the proposed Charter Amendment would render the City Charter no longer in compliance with RSA 49-C. Under the current process the City's Department Heads submit their respective budgets to the Mayor who, after review, in turn incorporates their financial needs into a budget presented to the Board of Mayor and Aldermen. By limiting any

budget increase to the Consumer Price Index, the proposed Charter Amendment abrogates the Mayor's duties under RSA 49-C:16 and Charter Sections 2.03(h), and 6.03 (a) to submit an original budget based upon the financial needs of the City and its Departments contrary to the general laws of the State of New Hampshire. Appeal of Concord, Exhibit G, pg 15.

15. The City of Manchester School District budget, also subject to the proposed Charter Amendment, is appropriated by the Board of Mayor and Aldermen under City Charter Section 6.06 as follows:

#### **SECTION 6.06 SCHOOL DISTRICT BUDGET.**

The school committee shall prepare and submit its budget proposal. The budget shall be subject to the approval of the board of mayor and aldermen. The budget shall be submitted in accordance with the budget schedule established by the mayor under Section 6.03(a). The board of mayor and aldermen shall accept such budget as submitted, or reject it and return it to the school committee along with the explanation for rejection and the maximum dollar amount which the board of mayor and aldermen will approve. The school committee shall then submit a revised budget which shall not exceed the maximum dollar amount established by the board of mayor and aldermen. The school committee shall administer, expend and account for the funds approved by the board of mayor and aldermen and shall have the exclusive authority to transfer funds among line items in the school budget.

16. By limiting any budget increase to the Consumer Price Index, the proposed Charter Amendment abrogates the School Committee's duties under Charter Section 6.06 to submit an original budget based upon the financial needs of the School District contrary to the general laws of the State of New Hampshire. Appeal of Concord, Exhibit G, pg 15.

#### **III. RSA 49-B Expressly Prohibits the Charter Amendment from Legislating a Tax Cap.**

14. The purpose of RSA 49-B is to implement the home rule powers recognized by article 39 of the New Hampshire constitution. RSA 49-B:1. The legislature further provided that

RSA 49-B "...shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their **form** of government so long as the resulting charter is neither in conflict with nor inconsistent with the general laws or the constitution of this state."

RSA 49-B:1, emphasis added. The proposed Charter Amendment seeks to place a cap on budget increases, not amend the form of government, and therefore the proposed Charter Amendment exceeds the scope of RSA 49-B.

15. On numerous occasions, the New Hampshire Supreme Court has held that RSA 49-B does not authorize municipalities to impermissibly intrude into the legislative authority of the general court. See City of Manchester Sch. Dist. v. City of Manchester, 150 N.H. 664, 670-671 (2004), (no charter amendment authority to make school district a city department), citing Girard v Town of Allenstown, 121 N.H. 268 (1981) (no charter amendment authority to enact rent control) and Appeal of Barry, 143 N.H. 161 (1998) (no charter amendment authority to alter retirement system).

16. While the statutory framework created by the general court allows voters of a municipality to elect a Mayor and Aldermen who formulate a budget; nowhere does it grant voters a right to legislate, regulate, or ratify the municipal or school budgets themselves. If the City voters wish to have a form of government that permits them to regulate the budget process, they may do so by following the procedure for charter revision for adopting a town

form of government. Claremont v. Craigie, 135 N.H. 528, 533 (1992).

17. Therefore by limiting the City's budget to the CPI the proposed Charter Amendment exceeds the narrow scope of RSA 49-B by impermissibly granting voters input into the original creation of the municipal and school budgets. Appeal of Concord at 15, 16, citing Claremont v. Craigie, 135 N.H. 528, 531 (1992). ("...that the legislature's failure to provide

for budgetary approval by a city's voters manifests its intent to prohibit that form of government for cities.")

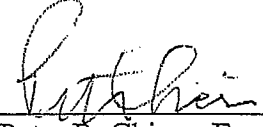
WHEREFORE, the City of Manchester respectfully prays the Honorable Court to:

- A. Declare the proposed Charter Amendment violates the New Hampshire Constitution and general laws of the State; and
- B. Grant such further relief the Court deems just and equitable.

Respectfully submitted,

The City of Manchester,  
By and through counsel,  
The Office of the City Solicitor

July 6, 2009

  
Peter R. Chiesa, Esq., Bar # 8141  
Office of the City Solicitor  
One City Hall Plaza  
Manchester, NH 03101  
(603) 624-6523

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT  
Docket No.

APPEAL OF THE CITY OF MANCHESTER

**Affidavit of Matthew Normand**

I, Matthew Normand, City Clerk of the City of Manchester, One City Hall Plaza, Manchester, New Hampshire, having first been duly sworn, upon my oath depose and say:

1. That I am employed as the Clerk of the City of Manchester.
2. That as the City Clerk, it is my duty is to keep and to preserve the official public documents and records of the City of Manchester; to conduct and preserve the integrity of elections; to provide administrative and support services to the Legislative body and to meet other regulatory requirements established by law.
3. That my duties also include attending the sessions of the Board of Mayor and Alderman and keep a record of their acts, doings, and proceedings, and perform such other services as they require. RSA 46:9.

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4. That I personally executed the duties of the clerk under RSA 49-B:3 with regard to the proposed Charter Amendment submitted by the The New Hampshire Advantage Coalition and attended all related meetings by the Board of Mayor and Alderman.

5. That a true and accurate chronology and summary of the Meetings of the Board of Mayor and Alderman related to the proposed charter amendment and votes thereon follows:

**August 21, 2008      Special Meeting of the Board of Mayor and Aldermen  
Charter Amendment Petition**

On motion by Alderman Smith, duly seconded by Alderman Garrity, it was voted to refer the proposed Charter Amendment to a public hearing on Tuesday, September 2, 2008.

**September 2, 2008      Special Meeting of the Board of Mayor and Aldermen  
Public Hearing-Proposed Charter Amendment**

Mayor Guinta advised that all wishing to speak have been heard, the testimony presented will be taken under advisement and considered by the Board of Mayor and Aldermen on September 2, 2008.

**September 2, 2008      Regular Meeting of the Board of Mayor and Aldermen**

On motion by Alderman Domaingue duly seconded by Alderman J. Roy it was voted to refer the proposed amendment to the Manchester City Charter resulting from a voter petition initiative providing for the insertion of Section 6.15 Limitation on Budget Increases to a special meeting to be held on Friday, September 5, 2008 at 4:00 PM. There being none opposed the motion passed.

**September 5, 2008      Special Meeting of the Board of Mayor and Aldermen  
Charter Amendment Petition**

On motion of Alderman Gatsas duly seconded by Alderman Garrity it was voted to adjourn the meeting.

Motion passed: Unanimous vote with the exception of Alderman Domaingue and Alderman O'Neil who voted in opposition.

**September 8, 2008      Special Meeting of the Board of Mayor and Aldermen  
Charter Amendment Petition**

On motion of Alderman Garrity seconded by Alderman Pinard it was voted to send the proposed amendment to the Manchester City Charter resulting from a


voter petition initiative providing for the insertion of Section 6.15 Limitation on Budget Increases to a special election to coincide with the November 2009 General Election.

Motion passed: Alderman Gatsas, Sullivan, J. Roy, Osborne, Pinard, Lopez, Shea, DeVries, Garrity, Smith and Ouellette voted in favor. Alderman M. Roy and Alderman O'Neil voted in opposition. Alderman Domaingue was absent.


6. That annexed hereto as Exhibits A-F are true and accurate copies of documents kept and preserved by the Office of the City Clerk.
7. That the next municipal election is scheduled for November 3, 2009.
8. That further your affiant sayeth not.

July 2, 2009

The State of New Hampshire  
Hillsborough County

  
Matthew Normand

Before, the undersigned officer, personally appeared Matthew Normand, who made oath that the foregoing is true to the best of his knowledge and belief on this 2<sup>nd</sup> day of July, 2009.

  
Justice of the Peace/Notary Public  
PETER R. CHIESA  
My commission expires: 8/13/13

# **EXHIBIT**

# **A**

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# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## RECEIPT OF FORMS OF PETITION – CHARTER AMENDMENT (TAX CAP)

The undersigned acknowledges the receipt of 2036 forms of petition from the Petitioners' Committee by the Office of the City Clerk, Manchester, NH relating to a proposed amendment to Section 6.15 Limitation of Budget Increases of the Charter of the City of Manchester, NH.

Date this 30<sup>th</sup> day of July, 2008.

Matthew Normand  
Deputy City Clerk

Mike Biundo  
Petitioners' Committee

Municipality of Manchester, NH

Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below.

6.15 Limitation on Budget Increase

A. Limitation on budget increase.

Recognizing that final tax rates for the City of Manchester are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21 J:35, I, the board of Mayor and Aldermen of the City of Manchester and the Manchester School District shall develop their annual budget proposals and shall act upon such proposals in accordance with the mandates of this section.

Override Provision. Budgetary restrictions described in any part of section 6.15 may be overridden upon a vote of two-thirds (2/3) of all the aldermen elected. Such override expires following adoption of the annual budget. Subsequent budgets or supplemental appropriations require additional two-thirds (2/3) override votes, or the limitations expressed in this section will apply.

1. In submitting their proposed budgets to the board of aldermen, the mayor and school district shall not propose total expenditures in an amount exceeding the budget established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.
2. In establishing a combined municipal budget, the board of mayor and aldermen shall be allowed to assume an estimated property tax rate only in an amount not to exceed the tax rate established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.

B. Exception to budget increase limitation. Capital expenditures, and the total or any part of the principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-third (2/3) vote of all the aldermen elected. The exception made under this section shall expire upon adoption of the budget for the next budget year, unless two-thirds (2/3) of all the aldermen elected, vote to renew the exception for the next budget year.

C. Budget limitation in a revaluation year. When the board of mayor and aldermen accepts an increase in real estate values as the result of a city wide revaluation, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenue as follows: The real estate taxes raised from prior budget year shall not be increased by a factor more than the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, then this figure shall be used in establishing the new municipal budget.

D. Budget limitation with annual changes in assessments. When annual changes in real estate values occur as a result of State of New Hampshire assessing requirements, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenues as follows:

1. The real estate taxes raised from the prior year shall not be increased by a factor of more than the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, plus real estate taxes calculated by applying the prior year real estate tax rate to the net increase in new construction. "Net increase in new construction" is defined as the total dollar value of building permits less total dollar value of demolition permits issued for the period of April 1-March 31 preceding budget adoption.

E. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A.2. herein, increased by the other revenues generated by the city.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

# **EXHIBIT**

## **B**

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# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MANCHESTER CITY CLERK CERTIFICATE OF PETITION

I, Matthew P. Normand, Deputy City Clerk of the City of Manchester, New Hampshire, hereby certify that:

A Charter Amendment Petition relating to a proposed amendment to Section 6.15 Limitation of Budget Increases of the Charter of the City of Manchester, New Hampshire was submitted to the Office of the City Clerk on July 30, 2008; and

The petition contained 3912 unverified signatures; and

Pursuant to RSA 49-B:5 II of the State of New Hampshire, in order to be sufficient, the petition must have been signed by 3874 qualified registered voters of the City of Manchester, the number of voters being equal to at least 20 percent of the 19,370 total votes cast in last regular municipal election on November 6, 2007; and

I examined or cause to be examined, each signature on the petition for sufficiency as outlined under RSA 49-B:3 of the State of New Hampshire, determining that the petition contained 2545 valid signatures of qualified voters in the City of Manchester, and therefore deemed that the original submission was **insufficient** on August 8, 2008; and


On August 8, 2008 received written notification from the Petitioners' Committee which identified their intent to amend the original submission and provide a supplemental petition; and

On August 16, 2008 received a valid supplemental petition pursuant to RSA 49-B:3 IV(a) which I examined or cause to be examined, each signature on the supplemental petition for sufficiency; and

Have determined that the supplemental petition contained 1491 additional valid signatures of qualified voters which provides for a grand total of 4036 valid signatures of qualified voters of the City of Manchester exceeding the 3874 valid signatures needed to qualify the petition; and therefore

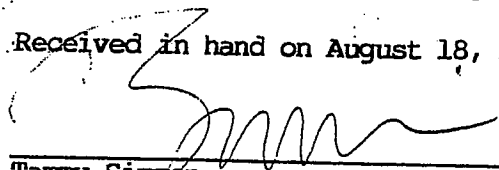
The petition is found to be sufficient to require the Board of Mayor and Aldermen to, within ten (10) days of receipt if this certification, provide for a public hearing on the proposed amendment as required by RSA 49-B:5 IV (a) of the State of New Hampshire.

IN TESTIMONY WHEREOF, I hereunto  
set my hand and affixed the official seal of  
the City of Manchester, this 18<sup>th</sup> day of August, 2008.

  
Matthew Normand  
Deputy City Clerk  
Office of the City Clerk  
City of Manchester, New Hampshire

Sent via Certified Mail on August 18, 2008

Received in hand on August 18, 2008 by:

  
Tammy Simon  
Petitioners' Committee

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
7007 0710 0003 1709 8211	
Postage	\$ 42
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.13
Postmark Here	
Sent To	
Karl Beisel	
Street, Apt. No., or PO Box No.	
116 Everett St.	
City, State, ZIP+4	
Manchester, NH 03104	
See Reverse for Instructions	



# CITY OF MANCHESTER

*Office of the City Clerk*




Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MEMORANDUM

TO: Board of Mayor and Aldermen

FROM: Matthew Normand  
Deputy City Clerk 

DATE: August 18, 2008

RE: Certification of Petition for proposed Charter Amendment (Tax Cap)

Please be advised that the Office of the City Clerk has certified the supplemental petition proposing a "Budget Control amendment" to the City Charter as submitted to the City on August 16, 2008. We have deemed the petition sufficient. A copy of the official notification to the Petitioners' Committee is attached as required by State law.

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Please call me if you have any additional questions.

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# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MANCHESTER CITY CLERK CERTIFICATE OF PETITION

I, Matthew P. Normand, Deputy City Clerk of the City of Manchester, New Hampshire, hereby certify that:

A Charter Amendment Petition relating to a proposed amendment to Section 6.15 Limitation of Budget Increases of the Charter of the City of Manchester, New Hampshire was submitted to the Office of the City Clerk on July 30, 2008; and

The petition contained **3912** unverified signatures; and

Pursuant to RSA 49-B:5 II of the State of New Hampshire, in order to be sufficient, the petition must have been signed by **3874** qualified registered voters of the City of Manchester, the number of voters being equal to at least 20 percent of the 19,370 total votes cast in last regular municipal election on November 6, 2007; and

I examined or cause to be examined, each signature on the petition for sufficiency as outlined under RSA 49-B:3 of the State of New Hampshire, determining that the petition contained **2545** valid signatures of qualified voters in the City of Manchester, and therefore deemed that the original submission was **insufficient** on August 8, 2008; and

On August 8, 2008 received written notification from the Petitioners' Committee which identified their intent to amend the original submission and provide a supplemental petition; and

On August 16, 2008 received a valid supplemental petition pursuant to RSA 49-B:3 IV(a) which I examined or cause to be examined, each signature on the supplemental petition for sufficiency; and

Have determined that the supplemental petition contained 1491 additional valid signatures of qualified voters which provides for a grand total of **4036** valid signatures of qualified voters of the City of Manchester exceeding the 3874 valid signatures needed to qualify the petition; and therefore

# **EXHIBIT**

# **C**

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# CITY OF MANCHESTER

## Office of the City Clerk



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

August 27, 2008

Kelly A. Ayotte, Attorney General  
Office of the Attorney General  
State of New Hampshire  
33 Capitol Street  
Concord, NH 03301

Dear Attorney General Ayotte:

A petition related to a proposed Charter amendment as identified below was submitted to the Office of the City Clerk in the City of Manchester on July 30, 2008. A public hearing on the amendment will be held on September 2, 2008 at 5:00 p.m. at City Hall in Manchester.

Pursuant to RSA 49-B:5-a, I am requesting the Secretary of State, Attorney General, and Commissioner of the Department of Revenue Administration to review this proposed Charter amendment to insure that it is consistent with the general laws of the State of New Hampshire.

The questions for the proposed amendment reads as follows:

"Shall the municipality approve the charter amendment reprinted below?"

---

### **6.15 Limitation on Budget Increase.**

---

#### **A. Limitation on budget increase.**

Recognizing that final tax rates for the City of Manchester are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35-I, the board of Mayor and Aldermen of the City of Manchester and the Manchester School District shall develop their annual budget proposals and shall act upon such proposals in accordance with the mandates of this section. Override Provision. Budgetary restrictions described in any part of section 6.15 may be overridden upon a vote of two-thirds (2/3) of all aldermen elected. Such override expires following adoption of the annual budget. Subsequent budgets are supplemental appropriations require additional two-

thirds (2/3) override votes, or the limitations expressed in this section will apply.

1. In submitting their proposed budgets to the board of aldermen, the mayor and school district shall not propose total expenditures in an amount exceeding the budget established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index-Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.
  2. In establishing a combined municipal budget, the board of mayor and aldermen shall be allowed to assume an estimated property tax rate only in an amount not to exceed the tax rate established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index - Urban as published by the United State Department of Labor for the calendar year immediately preceding the year of the budget adoption.
- B. Exception to budget increase limitation. Capital expenditures, and the total or any part of the principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-third (2/3) vote of all the aldermen elected. The exception made under this section shall expire upon adoption of the budget for the next budget year, unless two-thirds (2/3) of all the aldermen elected, vote to renew the exception for the next budget year.
- C. Budget limitation in a revaluation year. When the board of mayor and aldermen accepts an increase in real estate values as the result of a city wide revaluation, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenue as follows: The real estate taxes raised from prior budget year shall not be increased by a factor more than the change in National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, then this figure shall be used in establishing the new municipal budget.
- D. Budget limitation with annual changes in assessments. When annual changes in real estate values occur as a result of State of New Hampshire assessing requirements, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenues as follows:
1. The real estate taxes raised from the prior year shall not be increased by a factor of more than the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, plus real; estate taxes calculated by applying the prior year real estate tax rate to the net increase in new construction. "Net increase in new construction" is defined as the total dollar value of building permits less total



# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MANCHESTER CITY CLERK CERTIFICATE OF PETITION

I, Matthew P. Normand, Deputy City Clerk of the City of Manchester, New Hampshire, hereby certify that:

A Charter Amendment Petition relating to a proposed amendment to Section 6.15 Limitation of Budget Increases of the Charter of the City of Manchester, New Hampshire was submitted to the Office of the City Clerk on July 30, 2008; and

The petition contained **3912** unverified signatures; and

Pursuant to RSA 49-B:5 II of the State of New Hampshire, in order to be sufficient, the petition must have been signed by **3874** qualified registered voters of the City of Manchester, the number of voters being equal to at least 20 percent of the 19,370 total votes cast in last regular municipal election on November 6, 2007; and

I examined or cause to be examined, each signature on the petition for sufficiency as outlined under RSA 49-B:3 of the State of New Hampshire, determining that the petition contained **2545** valid signatures of qualified voters in the City of Manchester, and therefore deemed that the original submission was **insufficient** on August 8, 2008; and

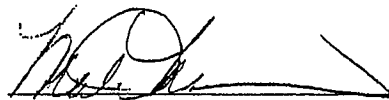
On August 8, 2008 received written notification from the Petitioners' Committee which identified their intent to amend the original submission and provide a supplemental petition; and

On August 16, 2008 received a valid supplemental petition pursuant to RSA 49-B:3 IV(a) which I examined or cause to be examined, each signature on the supplemental petition for sufficiency; and

Have determined that the supplemental petition contained 1491 additional valid signatures of qualified voters which provides for a grand total of **4036** valid signatures of qualified voters of the City of Manchester exceeding the 3874 valid signatures needed to qualify the petition; and therefore

**The petition is found to be sufficient** to require the Board of Mayor and Aldermen to, within ten (10) days of receipt if this certification, provide for a public hearing on the proposed amendment as required by RSA 49-B:5 IV (a) of the State of New Hampshire.

IN TESTIMONY WHEREOF, I hereunto  
set my hand and affixed the official seal of  
the City of Manchester, this 18<sup>th</sup> day of August, 2008.



---

Matthew Normand  
Deputy City Clerk  
Office of the City Clerk  
City of Manchester, New Hampshire

Municipality of Manchester, NH

Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below.

6.15 Limitation on Budget Increase

A. Limitation on budget increase.

Recognizing that final tax rates for the City of Manchester are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21 J:35, I, the board of Mayor and Aldermen of the City of Manchester and the Manchester School District shall develop their annual budget proposals and shall act upon such proposals in accordance with the mandates of this section.

Override Provision. Budgetary restrictions described in any part of section 6.15 may be overridden upon a vote of two-thirds (2/3) of all the aldermen elected. Such override expires following adoption of the annual budget. Subsequent budgets or supplemental appropriations require additional two-thirds (2/3) override votes, or the limitations expressed in this section will apply.

1. In submitting their proposed budgets to the board of aldermen, the mayor and school district shall not propose total expenditures in an amount exceeding the budget established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.
2. In establishing a combined municipal budget, the board of mayor and aldermen shall be allowed to assume an estimated property tax rate only in an amount not to exceed the tax rate established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.

B. Exception to budget increase limitation. Capital expenditures, and the total or any part of the principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-third (2/3) vote of all the aldermen elected. The exception made under this section shall expire upon adoption of the budget for the next budget year, unless two-thirds (2/3) of all the aldermen elected, vote to renew the exception for the next budget year.

C. Budget limitation in a revaluation year. When the board of mayor and aldermen accepts an increase in real estate values as the result of a city wide revaluation, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenue as follows: The real estate taxes raised from prior budget year shall not be increased by a factor more than the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, then this figure shall be used in establishing the new municipal budget.

D. Budget limitation with annual changes in assessments. When annual changes in real estate values occur as a result of State of New Hampshire assessing requirements, the board of mayor and aldermen shall adhere to a maximum increase in real estate tax revenues as follows:

1. The real estate taxes raised from the prior year shall not be increased by a factor of more than the change in the National Consumer Price Index - Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, plus real estate taxes calculated by applying the prior year real estate tax rate to the net increase in new construction. "Net increase in new construction" is defined as the total dollar value of building permits less total dollar value of demolition permits issued for the period of April 1-March 31 preceding budget adoption.

E. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A-2 herein, increased by the other revenues generated by the city.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

# **EXHIBIT**

# **D**

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# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

August 27, 2008

G. Philip Blatsos, Commissioner  
NH Department of Revenue Administration  
45 Chenell Drive  
Concord, NH 03301

Dear Commissioner Blatsos:

A petition related to a proposed Charter amendment as identified below was submitted to the Office of the City Clerk in the City of Manchester on July 30, 2008. A public hearing on the amendment will be held on September 2, 2008 at 5:00 p.m. at City Hall in Manchester.

Pursuant to RSA 49-B:5-a, I am requesting the Secretary of State, Attorney General, and Commissioner of the Department of Revenue Administration to review this proposed Charter amendment to insure that it is consistent with the general laws of the State of New Hampshire.

The questions for the proposed amendment reads as follows:

"Shall the municipality approve the charter amendment reprinted below?"

## **6.15 Limitation on Budget Increase.**

### **A. Limitation on budget increase.**

Recognizing that final tax rates for the City of Manchester are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35-I, the board of Mayor and Aldermen of the City of Manchester and the Manchester School District shall develop their annual budget proposals and shall act upon such proposals in accordance with the mandates of this section. Override Provision. Budgetary restrictions described in any part of section 6.15 may be overridden upon a vote of two-thirds (2/3) of all aldermen elected. Such override expires following adoption of the annual budget. Subsequent budgets are supplemental appropriations require additional two-

thirds (2/3) override votes, or the limitations expressed in this section will apply.

1. In submitting their proposed budgets to the board of aldermen, the mayor and school district shall not propose total expenditures in an amount exceeding the budget established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index-Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.
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dollar value of demolition permits issued for the period of  
April 1- March 31preceding budget adoption.

- E. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A.2. herein, increased by the other revenues generated by the City.

I have enclosed is a copy of the Certificate of Petition which serves as the report regarding this matter. A sample of the petition circulated by the Petitioners' Committee has also been enclosed.

Sincerely,



Matthew Normand  
Deputy City Clerk

Enclosure

pc: Barbara Robinson, Director  
Donald Borrer, Assistant Director



# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MANCHESTER CITY CLERK CERTIFICATE OF PETITION

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**The petition is found to be sufficient** to require the Board of Mayor and Aldermen to, within ten (10) days of receipt if this certification, provide for a public hearing on the proposed amendment as required by RSA 49-B:5 IV (a) of the State of New Hampshire.

IN TESTIMONY WHEREOF, I hereunto  
set my hand and affixed the official seal of  
the City of Manchester, this 18<sup>th</sup> day of August, 2008.



---

Matthew Normand  
Deputy City Clerk  
Office of the City Clerk  
City of Manchester, New Hampshire

Municipality of Manchester, NH

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6.15 Limitation on Budget Increase

A. Limitation on budget increase.

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Override Provision. Budgetary restrictions described in any part of section 6.15 may be overridden upon a vote of two-thirds (2/3) of all the aldermen elected. Such override expires following adoption of the annual budget. Subsequent budgets or supplemental appropriations require additional two-thirds (2/3) override votes, or the limitations expressed in this section will apply.

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B. Exception to budget increase limitation. Capital expenditures, and the total or any part of the principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-third (2/3) vote of all the aldermen elected. The exception made under this section shall expire upon adoption of the budget for the next budget year, unless two-thirds (2/3) of all the aldermen elected, vote to renew the exception for the next budget year.

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E. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A.2. herein, increased by the other revenues generated by the city.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DOMICILE ADDRESS: \_\_\_\_\_ Manchester, NH

**EXHIBIT**

**E**

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# CITY OF MANCHESTER

## Office of the City Clerk



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

August 27, 2008

William M. Gardner  
Secretary of State  
State of New Hampshire  
State House, Room 204  
Concord, NH 03301

Dear Secretary of State Gardner:

A petition related to a proposed Charter amendment as identified below was submitted to the Office of the City Clerk in the City of Manchester on July 30, 2008. A public hearing on the amendment will be held on September 2, 2008 at 5:00 p.m. at City Hall in Manchester.

Pursuant to RSA 49-B:5-a, I am requesting the Secretary of State, Attorney General, and Commissioner of the Department of Revenue Administration to review this proposed Charter amendment to insure that it is consistent with the general laws of the State of New Hampshire.

The questions for the proposed amendment reads as follows:

"Shall the municipality approve the charter amendment reprinted below?"

### **6.15 Limitation on Budget Increase.**

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#### **A. Limitation on budget increase.**

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dollar value of demolition permits issued for the period of  
April 1- March 31preceding budget adoption.

- E. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established pursuant to Paragraph A.2. herein, increased by the other revenues generated by the City.

I have enclosed is a copy of the Certificate of Petition which serves as the report regarding this matter. A sample of the petition circulated by the Petitioners' Committee has also been enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Normand", with a long horizontal flourish extending to the right.

Matthew Normand  
Deputy City Clerk

Enclosure





# CITY OF MANCHESTER

*Office of the City Clerk*



Carol A. Johnson  
City Clerk

Matthew Normand  
Deputy City Clerk

## MANCHESTER CITY CLERK CERTIFICATE OF PETITION

I, Matthew P. Normand, Deputy City Clerk of the City of Manchester, New Hampshire, hereby certify that:

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The petition contained **3912** unverified signatures; and

Pursuant to RSA 49-B:5 II of the State of New Hampshire, in order to be sufficient, the petition must have been signed by **3874** qualified registered voters of the City of Manchester, the number of voters being equal to at least 20 percent of the 19,370 total votes cast in last regular municipal election on November 6, 2007; and

I examined or cause to be examined, each signature on the petition for sufficiency as outlined under RSA 49-B:3 of the State of New Hampshire, determining that the petition contained **2545** valid signatures of qualified voters in the City of Manchester, and therefore deemed that the original submission was **insufficient** on August 8, 2008; and

On August 8, 2008 received written notification from the Petitioners' Committee which identified their intent to amend the original submission and provide a supplemental petition; and

On August 16, 2008 received a valid supplemental petition pursuant to RSA 49-B:3 IV(a) which I examined or cause to be examined, each signature on the supplemental petition for sufficiency; and

Have determined that the supplemental petition contained 1491 additional valid signatures of qualified voters which provides for a grand total of **4036** valid signatures of qualified voters of the City of Manchester exceeding the 3874 valid signatures needed to qualify the petition; and therefore

One City Hall Plaza • Manchester, New Hampshire 03101 • (603) 624-6455 • FAX: (603) 624-6487  
E-mail: [CityClerk@ManchesterNH.gov](mailto:CityClerk@ManchesterNH.gov) • Website: [www.manchesternh.gov](http://www.manchesternh.gov)

Pursuant to RSA 49-B HOME RULE — MUNICIPAL CHARTERS, the intervenors brought a citizen petition to have a city charter amendment ("the proposed amendment") placed before the voters of the City. The proposed amendment states:

**34-a      Limitation on Budget Increase**

**I.      Limitation on budget increase.**

Recognizing that final tax rates for the City of Concord are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35, I, the City Council shall develop its annual budget proposals and shall act upon such proposals in accordance with the mandates of this section.

Override Provision. Budgetary restrictions described in any part of section 34-a may be overridden upon a vote two-thirds (2/3) of all elected members of City Council. Such override expires following adoption of the annual budget. Subsequent budgets or supplemental appropriations require additional two-thirds (2/3) override votes, or the limitations expressed in this section will apply.

In establishing a municipal budget, the City Council shall be allowed to assume an estimated property tax rate in an amount not to exceed the tax rate established during the prior fiscal year increased by a factor equal to the change in the National Consumer Price Index — Urban as published by the United States Department of Labor for the calendar year immediately preceding the year of the budget adoption.

**II.      Exception to budget increase limitation.** Capital expenditures, and the total or any part of the principal and the interest payments of any municipal bond, whether established for school or municipal purposes, may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-thirds (2/3) vote of all members of the City Council. The exception made under this section shall expire upon adoption of the budget for the next budget year, unless two-thirds (2/3) of all members of the City Council vote to renew the exception for the next budget year.

**III.      Budget limitation in a revaluation year.** When the City Council accepts an increase in real estate values as the result of a city wide revaluation, the City Council shall adhere to a maximum increase in the real estate tax revenues as follows: The real estate taxes raised from the prior budget year shall be increased by a factor no more than the change in the National Consumer Price Index — Urban as published by the United States Department of

Labor for the calendar year immediately preceding budget adoption, then this figure shall be used in establishing the new municipal budget.

IV. Budget limitation with annual changes in assessments. When annual changes in real estate values occur as a result of State of New Hampshire assessing requirements, the City Council shall adhere to a maximum increase in real estate tax revenues as follows: The real estate taxes raised from the prior year shall be increased by a factor of no more than the change in the National Consumer Price Index — Urban as published by the United States Department of Labor for the calendar year immediately preceding budget adoption, plus real estate taxes calculated by applying the prior tax rate to the net increase in new construction. "Net increase in new construction" is defined as the total dollar value of building permits less total dollar value of demolition permits issued for the period of April 1 — March 31 preceding budget adoption.

V. Total Expenditures. Total expenditures for any given budget year shall not exceed the amount of funds reasonably calculated to be derived by the tax rate established herein, increased by the other revenues generated by the municipality.

**Explanatory Note:** This amendment places a cap on the level of City spending based on the National Consumer Price Index. Capital expenditures and debt expenditures are included in the cap. The cap may be overridden by a two-thirds (2/3) vote of the City Council.

Resp. to City of Concord's RSA 49-B:10 Appeal, pgs. 2-3. As of January 29, 2009, six other municipalities in New Hampshire have adopted similar charter amendments, although none have been judicially challenged.

The intervenors submitted petition forms containing signatures in support of the proposed amendment to the City Clerk. On August 25, 2008, the City Clerk determined that the petitions contained a sufficient number of valid

signatures, and that the proposed amendment may be submitted to the State agencies, pursuant to RSA 49-B:5-a, for a determination of whether the proposed amendment is consistent with the New Hampshire Constitution and the general laws of the state. On September 8, 2008, the Secretary of State notified the City Clerk that the proposed amendment had been reviewed by the State agencies,

who determined that the proposed amendment did not violate the New Hampshire constitution or the general laws of the state. On October 14, 2008, the City Council instructed the City Solicitor to file an appeal of the decision of the State agencies, but pending the appeal the City Council voted to place the proposed amendment on the November 2009 municipal ballot. On November 17, 2008, the City filed the pending appeal pursuant to RSA 49-B:5-a, III and RSA 49-B:10, IV.

On November 26, 2008, the intervenors filed a motion to intervene, which was granted. The same day the intervenors filed a motion to dismiss for timeliness.

#### Analysis

##### Motion to Dismiss-Timeliness

The intervenors assert that the City's appeal should be dismissed for timeliness. Specifically, the intervenors maintain that because RSA 49-B:5 does not contain a specific time limit for filing an appeal, it is appropriate to look to an analogous statute that does include a time limit. The intervenors contend that RSA 541, dealing with rehearings and appeals of certain state department and state board decisions, is the most analogous statute. RSA 541:3 and RSA 541:6 provides for a 30-day limitation period to file an appeal from a state agency. The

intervenors maintain that the City's appeal should be denied because it was filed 70 days after the City received the decision of the Attorney General, the Secretary of State, and the Department of Revenue Administration.

The City contends that RSA 541 does not apply, and that its appeal was brought in a timely manner. The City asserts that RSA 49-B:10 and RSA 49-B:5-

a, III authorize the City to seek judicial review by the Superior Court of the State agencies' decision. The City maintains that the statutory language of RSA 49-B indicates that the legislature intended to create a procedure for judicial review, and therefore, the intervenors' analogy to RSA 541 is inappropriate and inapplicable.

The Court is not persuaded by the intervenors' argument that the 30-day limitations period in RSA 541 should apply to the present matter. In Chauffeurs, Teamsters & Helpers Local Union No. 633 v. Silver Brothers, Inc., 122 N.H. 1035 (1982), cited by the intervenors, the New Hampshire Supreme Court found that it was appropriate to impose a time limit from a substantially analogous statute.

However, in that instance, the applicable statute did not provide a statutory process for judicial review. Here, the legislature clearly intended to create a statutory process for review because RSA 49-B, III states, "[t]he governing body of the municipality may seek judicial review of a decision of the secretary of state, attorney general or the commissioner of the department of revenue administration by appeal in superior court, pursuant to RSA 49-B:10, IV."

Therefore, the present matter is distinguishable from Chauffeurs, and there is no indication that the legislature intended to place a time limitation upon the municipalities. Accordingly, the intervenors' motion to dismiss for timeliness is

DENIED.

Appeal

The City contends that the proposed amendment is contrary to the New Hampshire Constitution and the general laws of the state. The City maintains that "[t]he express purpose of RSA 49-B is to implement the home rule powers

recognized in Part I, Article 39 of the State Constitution by authorizing a municipality to adopt a form of government that best addresses its local needs." City of Concord's Mem. of Law, pg. 2 (citing Girard v. Town of Allenstown, 121 N.H. 268, 372 (1981)). Further, the City maintains that "[t]his legislation 'provides the statutory framework through which cities and towns may amend their actual forms of government, and grants them the power necessary to carry out such changes.'" City of Concord's Mem. of law, pg. 2, (quoting Harriman v. City of Lebanon, 122 N.H. 477 (1982)). The City asserts that RSA 49-B only grants it the power to amend its form of government, and it is not allowed to exercise legislative authority. The City maintains that because the legislature has created a statutory scheme governing municipal budgets in RSA 49-C:23, and a statutory scheme governing taxation in RSA 41:15, the proposed amendment would interfere with the power of the legislature.

The City expresses further concerns about the proposed amendment. Specifically, the City maintains that its ability to carry out mandatory obligations imposed by the state legislature and the City charter will be affected by the proposed amendment. The City also argues that the proposed amendment will interfere with the City Council's ability to purchase real or personal property for the use of the city, as well as the City's ability to indemnify its officers and employees for damages arising out of civil rights suits.

Finally, the City contends that the wording of part of the proposed amendment is ambiguous. The City asserts that the phrase "two-thirds (2/3) vote of all members of the City Council" could create an interpretation problem because it could mean "two-thirds of fifteen or two-thirds of the councilors

present and voting or if there are vacancies, ...[or] two-thirds of the present council membership[.]” City of Concord’s Mem. of Law, pg. 5 (emphasis omitted). Further, the City maintains that it is unclear which Consumer Price Index series will be applied per Sections I, III, and IV of the proposed amendment.

The State agencies appeared at the hearing before this Court in a neutral position. The State agencies maintain that the proposed amendment is consistent with the general laws of New Hampshire. The State agencies acknowledge that the City’s charter must be prepared pursuant to RSA 49-C, and that the proposed amendment must be prepared pursuant to RSA 49-C:23. The

State agencies contend that the proposed charter does not conflict with RSA 49-C:23, despite the City’s assertion that if the legislature had intended to vest cities with the ability to impose limits on budgets, it would have expressly authorized this in the statute. Further, the State agencies assert that the proposed amendment would not require the City to refrain from funding its mandatory obligations because the proposed amendment would call only for a standardized basis for calculating the budget, and would allow for the City Council to override the standardized basis with a two-thirds vote. Similarly, the State agencies contend that the proposed amendment will not interfere with the City’s ability to

~~purchase property or indemnify employees because it allows for an override with~~  
a two-thirds vote. Finally, the State agencies maintain that there are no ambiguities in the proposed amendment, as to the meaning of a two-thirds vote and the Consumer Price Index, that make the proposed amendment inconsistent with state law.

In response, the City asserts that the State agencies have ignored the unambiguous legislative purpose of RSA 49-B, which limits the purpose of this chapter to providing the framework by which the City may amend only its actual form of government. The City contends that the proposed amendment is not relative to the form of government, and is therefore in violation of the intent of RSA 49-B.

The intervenors assert that the legislature intended for RSA 49-B to provide the City with broader power to amend its charter than the City suggests. Specifically, the intervenors suggest that RSA 49-B:2 provides for two types of changes to municipal charters: amendments and revisions. The statute defines amendment as "the enactment or repeal of a single section or subsection of a charter pertaining to any one subject matter, and any related section the meaning or operation of which is changed as a result of the enactment or repeal." RSA 49-B:2, IV (a). The statute defines a revision as "multiple changes in the basic form of government proposed by several enactments or repeals." RSA 49-B:2, IV (i). The intervenors maintain that changes to the form of government are to be done through the revision process, and that changes of a smaller magnitude, such as the proposed amendment, are allowed through the amendment process. The intervenors further note that if the City's interpretation that RSA 49-B only

provides for changes to the form of government is correct, there would have been no need for the legislature to adopt separate revision and amendment procedures.

The intervenors also contend that limits on government spending in city charters are permitted because RSA 49-C:23, IX, requires that the charter



provide for the "[e]stablishment of a fiscal control function" as part of the budgetary process. They also assert that the statute does not contain language that would prohibit the spending cap, because the proposed amendment allows for a two-third supermajority override. In the alternative, the intervenors maintain that even if the Court finds that RSA 49-C:23, IX, does not specifically authorize the proposed amendment, it is still not in conflict with the general laws of the state. The intervenors specifically address the City's concerns about RSA 49-C:23, and assert that the statute "expresses the legislative intent that the budget processes of all city charters share certain minimum, enumerated elements in common." *Intervenors' Mem. of Law Opposing Appeal of City of Concord*, pg. 5. The intervenors argue that "[n]othing in the language of the statute, however, suggests that the items listed are intended to be exhaustive or exclude other elements that cities may decide to include." *Id.*

The intervenors further assert that if the Court finds that the statutory scheme is ambiguous, the Court should uphold the decision of the State agencies by applying the "doctrine of administrative gloss." The intervenors contend that over the past several years, the State agencies have approved several similar charter amendments, none of which have been judicially challenged by the municipalities. The intervenors maintain that administrative gloss applies in

cases such as this, where "those responsible for the implementation of a statute interpret the provision 'in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference.'" *Intervenors' Mem. of Law Opposing Appeal of City of Concord*, pg. 5 (quoting Anderson v. Motor Sports Holdings, LLC, 155 N.H. 491, 502 (2007)). The intervenors assert

that because the State agencies have approved several similar charter amendments, which were adopted by other municipalities, and the legislature has not changed RSA 49-B or RSA 49-C to preclude such charter amendments, the statutory interpretation of the State agencies must be correct.

The State Constitution grants the City the power to create a charter to form a government. Article 39 of the New Hampshire Constitution confers the power upon a municipality "to adopt or amend their charters or forms of government in any way which is not in conflict with general law." N.H. Const. Art., 39. RSA 49-C sets forth the enabling legislation concerning local options and city charters. The New Hampshire legislature has also enacted RSA 49-B, a narrowly tailored home rule statute which provides a procedural framework through which cities may amend certain forms of their government. New Hampshire is not a municipal home rule state as that term might be customarily understood under the law of other jurisdictions. See Loughlin, 13 NEW HAMPSHIRE PRACTICE, LOCAL GOVERNMENT LAW, §§ 61-63. "[T]owns are but subdivisions of the State and have only the powers the State grants to them." Girard v. Town of Allenstown, 121 N.H. 268, 270 (1981); Town of Hooksett v. Baines, 148 N.H. 625, 628 (2002). In Town of Hooksett v. Baines, the New Hampshire Supreme Court noted that:

We have explained that the expressed purpose of RSA chapter 49-B is to implement the home rule powers recognized in Part 1, Article 39 of the State Constitution by authorizing a municipality to adopt a form of government that best addresses its local needs. This legislation provides the statutory framework through which cities and towns may amend their actual forms of government, and grants them the power necessary to carry out such changes. We have warned, however, that the constitutional authority supporting RSA chapter 49-B in no way provides or suggests that the towns, cities or

other subdivisions of this State should have the right to exercise supreme legislative authority. Indeed, the statute expressly provides that its provisions shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their form of government so long as the resulting charter is neither in conflict with nor inconsistent with general laws or the constitution of this state. RSA 49-B:1. As a result RSA chapter 49-B grants a municipality only the power necessary to amend its form of government.

Town of Hooksett v. Baines, 148 N.H. 625, 628 (2002) (citations, emphasis, and quotations omitted).

The New Hampshire Supreme Court has "narrowly construed the scope of authority conferred upon municipalities by RSA chapter 49-B in light of the legislative directive that it be strictly interpreted." City of Manchester Sch. Dist. & a. v. City of Manchester, 150 N.H. 664, 672 (2004). The New Hampshire Supreme Court has held that RSA chapter 49-B "permits a municipality with a city council-city manger form of government to adopt a process of citizen initiative and referendum." Id. at 671 (citing Harriman v. City of Lebanon, 122 N.H. 477, 482-483 (1982)). In contrast, the New Hampshire Supreme Court held that RSA chapter 49-B does not give a city the authority to make a school district a city department by amending its charter. City of Manchester Sch. Dist. & a. v. City of Manchester, 150 N.H. at 672. Additionally, the New Hampshire Supreme Court has found that RSA Chapter 49-B does not give a town the authority to

enact a rent control ordinance, alter its retirement system, or impose term limits on city officials. Id. at 671-672 (citing Girard v. Town of Allenstown, 121 N.H. 268, 271-273 (1981); Appeal of Barry, 143 N.H. 161, 165-166 (1998); and Town of Hooksett v. Baines, 148 N.H. at 630). The New Hampshire Supreme Court has consistently denied charter amendments that would "impermissibly intrude into

the legislative authority of the general court." City of Manchester School Dist.,  
150 N.H. at 671.

RSA 49-B:2, III, provides that "[i]f the proposed charter denominates the  
municipality as a city, the charter shall be prepared pursuant to RSA 49-C."

Because Concord constitutes a city, the Court turns to RSA 49-C. The Court  
specifically looks at RSA 49-C:23, which provides that a city charter shall provide  
for the following matters regarding the budget process and fiscal control:

- I. A budget submission date and a date by which an annual budget shall be finally adopted by the elected body. Failing final adoption by the established date, the budget as originally submitted by the chief administrative officer shall become the budget.
- II. ~~One or more public hearings on the budget before its final adoption.~~  
A copy of the proposed budget and notice of the public hearing shall be published at least one week in advance of any public hearing.
- III. Procedures for the transfer of funds among various budgeted departments, funds, accounts, and agencies as may be necessary during the year.
- IV. An annual independent audit conducted by certified public accountants experienced in municipal accounting. Copies or abstracts of such audits shall be made public along with an annual report of the city's business. Nothing in this paragraph shall prevent the elected body from requiring such other audits as it deems necessary. Audit services shall be put out to bid on a periodic basis as specified in the charter.
- V. Bonding of officials, officers and employees, the cost of which shall be paid by the city.
- VI. Procedures for appropriation of funds, after notice and public hearing and by a 2/3 vote, for purposes not included in the annual budget as adopted.
- VII. ~~Designation of one or more depositories of city funds by the elected body, the periodic deposit of funds, and the security required for such funds. Personal surety bonds shall not be deemed property security.~~
- VIII. Periodic, but at least quarterly, reporting of the state of city's finances to the public and the elected body by the chief administrative officer. The chief administrative officer, with approval of the elected body, may reduce appropriations for any item or items, except amounts required for debt and interest charges or other legally-required expenditures, to such a degree as

may be necessary to keep total expenditures within total anticipated revenues.

- IX. Establishment of a fiscal control function, including pre-audit of all authorized claims against the city before payment. The head of such function need not be a resident of the city or the state at the time of selection, shall not be treasurer, and shall be chosen solely on the basis of executive and administrative qualifications and actual experience in and knowledge of accepted practices in respect to the duties of municipal management.

In Town of Hooksett v. Baines, the New Hampshire Supreme Court noted:

It is well settled that towns cannot regulate a field that has been preempted by the State. The preemption doctrine flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent with, State law. Thus, preemption will occur when local legislation either expressly contradicts a state or otherwise runs counter to the legislative intent underlying a statutory scheme. Generally, a detailed and comprehensive State statutory scheme governing a particular field is demonstrative of the State's intent to preempt that field by placing exclusive control in the State's hands. That the State has created a comprehensive statutory scheme does not automatically result in preemption, however, because it could nonetheless authorize additional municipal regulation.

148 N.H. at 627. The Court finds that in adopting RSA 49-C:23, the legislature has created a comprehensive statutory scheme for the budget process. As noted in Town of Hooksett v. Baines, although the existence of such a statutory scheme does not automatically preempt the proposed amendment, the Court finds the legislature has not authorized municipalities to regulate the budget process.

Further, the Court finds that the legislature has created a statutory scheme for the general powers and duties of the City Manager. RSA 49-C:16 states:

He shall enforce the ordinances of the city, the charter, and all general laws applicable to the city. He shall keep the elected body informed of the condition and needs of the city and shall make such reports and recommendations as he may deem advisable and perform such other duties as may be required by charter, or ordinance or resolution of the elected body. He shall have and perform such other powers and duties not inconsistent with the provisions of the charter as now are or may be conferred or

imposed upon him by municipal ordinance or upon mayors or city managers by general law. The city manager shall have the right to take part in the discussion of all matters before the city council, but not the right to vote.

One of the City Manager's duties is to enforce the charter.

According to § 34 of the City charter, "the chief officer of each department shall submit an itemized estimate of the expenditures for the next fiscal year for the department or activities under the officer's control" to the City Manager. Only then can the City Manager develop a budget based upon the financial needs and responsibilities of the City, and submit the proposed budget to the City Council. The Court finds that the proposed amendment would interfere with the City Manager's duty to present to the City Council an original budget that is based upon the financial needs of City departments. Although the proposed amendment does not preclude the City Manager from submitting a budget based upon the responsibilities of the City, it essentially makes this step futile because the proposed amendment would place restraints upon any budget that could be approved by the City Council without a two-thirds override vote.

The Court also finds that the proposed amendment goes beyond the narrow scope of the legislature's intent in RSA 49-B. The Court finds that the proposed amendment is not amending the form of government, which the statute permits, but is instead legislating, which is expressly prohibited by the statute.

By placing a cap on the budget that the City Manager may propose to the City Council, the proposed amendment legislates by giving the voters input into the original creation of the budget, which they currently do not have. In Claremont v. Craigie, 135 N.H. 528, (1992), while denying a proposed charter amendment that

would give the voters of the city the right to vote on the final budget, the New Hampshire Supreme Court found: "that the legislature's failure to provide for budgetary approval by a city's voters manifests its intent to prohibit that form of government for cities." Id. at 531. During the hearing on this matter, the Attorney General's office recognized the New Hampshire Supreme Court's decision in Claremont v. Craigue, and noted that the issue of whether voters who do not have the right to vote upon the final adoption of the budget should be able to have input into the creation of the original budget is a novel question, which was not addressed by the State agencies. In light of Claremont v. Craigue, the relevant statutes and the City charter, the Court finds that the voters are not entitled to the type of input into the creation of the original budget that the proposed amendment would provide.

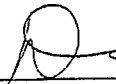
Additionally, the Court is not persuaded by the intervenors' argument that the State agencies' decision should be upheld under the administrative gloss doctrine. For the foregoing reasons, the Court finds that the proposed charter amendment is in violation of the New Hampshire Constitution and the general laws of the state.

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SO ORDERED.

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3/18/09  
DATE

  
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Diane M. Nicolosi  
Presiding Justice